

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 10-T-0139 - Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the PSL for the Construction, Operation and Maintenance of a High Voltage Direct Current Circuit from the Canadian Border to New York City.

RULING ON SCHEDULE AND OTHER PROCEDURAL MATTERS

(Issued October 1, 2010)

KEVIN J. CASUTTO and
MICHELLE L. PHILLIPS, Administrative Law Judges:

The purpose of this ruling is to address the following procedural matters, raised at the September 21, 2010 prehearing conference: the procedural schedule; the due date for future requests for intervenor funding; the Applicant's requests for protection of certain information alleged to be trade secret, attorney work-product, and/or confidential; suggestions for the number, timing and location of public statement hearings; active party status; and the parties' efforts to create or join into groups with similar interests.

Schedule

We previously requested the presentation of a consensus litigation schedule that, *inter alia*, assumed the completion of the litigation phase, including recommendations to the Commission, by a Commission session occurring within one year of the application's compliance date;¹ and allowed for the issuance of a Recommended Decision and the filing of exceptions briefs prior to the anticipated Commission session.

¹ Here, in order to allow the Commission to act within one year of the date of compliance, the relevant date would be August 10, 2011.

In response to our request, Department of Public Service Staff (Staff) submitted a consensus schedule for consideration that contained, in relevant part, the following dates and events:²

<u>Event</u>	<u>Date</u>
Initial award of funds	October 6, 2010
Initial Public Statement Hearing	October 12 - November 9, 2010
Filing of Applicant's supplemental direct testimony and exhibits providing proposed certificate conditions, EM&CP procedures and engineering details	October 19, 2010
Requests for Intervenor Funding	October 20, 2010³
Alternate Route Identification	October 28, 2010
Notice of Impending Settlement Negotiations (if deemed appropriate)	November 2, 2010
Site Visit Proposal	November 4, 2010⁴
Formal service of alternatives on additional parties (if necessary)	November 10, 2010
Site Visit	November 15-19, 2010
Settlement Impasse	December 14, 2010
DPS Staff and Intervenor Direct Cases	December 23, 2010

² The proposed consensus schedule also contains dates for events that have already occurred and dates for filing of, and comments on, the Environmental Management and Construction Plan (EM&CP) for Segment One.

³ This date was not part of the proposed schedule; however, it was adopted at the prehearing conference.

⁴ This date was not part of the proposed schedule; it is adopted in this ruling.

Rebuttal Cases	January 20, 2011
Evidentiary Hearings	February 1 - 18, 2011 ⁵
Initial Briefs	March 16, 2011
Reply Briefs	March 31, 2011

Staff noted that no party objected to the above schedule, and added that the Applicant and the Department of Environmental Conservation explicitly stated that they either support, or do not object to, it.⁶

We adopt the above schedule, which provides for relevant dates through the submission of reply briefs. The proposed dates for filing of, and comments on, the EM&CP for Segment One are not adopted because the comment dates might leave insufficient time for the summary, analysis, and reporting of such comments to the Commission for decision on or before August 10, 2011.⁷ Instead, this scheduling issue will be revisited during the evidentiary hearings.

With respect to the dates for site visits, we note that the purpose of these visits is to help the triers-of-fact better understand the physical context of the benefits or detriments of the routing proposals, and so generally are most useful for us if undertaken after cross-examination. Here, the site visits are scheduled to occur prior to the evidentiary hearings. Thus, we may find that, after having received the parties' fully developed litigation positions and tested the

⁵ When asked at the conference, no party objected to holding the evidentiary hearings in Albany. Accordingly, all evidentiary hearings will be held in Albany and will be separately noticed.

⁶ See Staff letter dated September 15, 2010.

⁷ The proposed date for filing the EM&CP for Segment One is June 17, 2011; the proposed date for comments is July 18, 2011.

Applicant's proposed route(s) through cross-examination, additional site visits would have been desirable. However, we note that (1) there is no requirement that site visits be conducted, (2) the purpose of the site visits is not to create or gather evidence, and (3) the timeframe proposed for conducting the site visits in this proceeding reasonably balances competing concerns, such as the increased potential for encountering adverse weather conditions if we delay such visits, against the goal of conducting this proceeding within the previously-mentioned one-year time frame. In order to keep to this schedule, the parties are encouraged to reach consensus on, and provide: (1) a list of the locations they wish to visit, including an explanation for the locations recommended, and (2) a proposed process for such visits, including transportation. This consensus proposal should be emailed to us and the parties by Thursday, November 4, 2010.

At the prehearing conference, we mentioned other concerns about the schedule that we will not reiterate here. However, the parties reached consensus on the schedule. In addition, there appears to be a shared interest in attempting to coordinate the timing of this proceeding so that it does not hinder the Applicant's ability to obtain other necessary approvals, meet the U.S. Department of Energy loan guarantee deadline or risk federal preemption. Based on the foregoing, the schedule outlined above adequately addresses both the constraints and objectives we have in this proceeding at this time.⁸ Moreover, we are hopeful that the parties will explore every available opportunity to resolve the issues to be addressed in this proceeding, in whole or in part.

⁸ Should circumstances change going forward, we may find it necessary to revisit the schedule.

Intervenor Funding Requests

Thus far, two requests for awards of intervenor funds have been submitted. These requests total \$255,500 of the available \$450,000 amount and will be ruled on separately. At the prehearing conference, two additional parties expressed an interest in possibly requesting intervenor funds. We therefore established a due date of October 20, 2010 for any and all such requests. Any active parties interested in requesting such funds should consult the Commission's intervenor funding rules, which are available on the Department web page using the case number 10-M-0082. Applications for funding that do not comply fully with each requirement of the applicable rules will not be granted.

Information Claimed to be Protected

The Applicant has submitted several requests for protection of certain information alleged to be trade secret, attorney work-product, and/or confidential. As noted at the prehearing conference, only Staff and Independent Power Producers of New York, Inc. (IPPNY) have requested portions of such information.⁹ The information Staff requested has been provided for its review, with the understanding that such information would be kept confidential. As noted at the conference, Staff is subject to Public Service Law (PSL) §15, which makes it a misdemeanor for Staff to divulge confidential information that it comes to know about during the course of inspection or examination, unless directed to do so by the Commission, a court or judge, or authorized by law. The

⁹ No party has requested the information alleged to be attorney work-product.

Applicant, through its counsel, expressly stated that it is willing to provide such information to Staff, because of PSL §15, and to any other State agency whose employees are subject to similar provisions under the Public Officers Law.

With respect to the information sought by IPPNY, the Applicant and IPPNY are working to develop a suitable non-disclosure agreement.

No other active party has requested access to information claimed to be protected. Based on the foregoing, we therefore find that there is no need for a ruling on the Applicant's requests for protection at this time. However, if future circumstances warrant it, we will address such requests as needed and in accordance with applicable Commission rules.

Public Statement Hearings

Staff suggested the following public statement hearing locations: New York City, Yonkers, Kingston, Schenectady, Whitehall, and Plattsburgh. As we noted at the conference, we have already made arrangements to hold a public statement hearing in Yonkers on October 25, 2010. As for the other suggested locations, subject to the availability of appropriate hearing locations and other considerations, reasonable efforts will be made to accommodate Staff's suggestion. As soon as hearing location arrangements are finalized, a formal notice will be issued including the times, dates, and locations of the public statement hearings.

Active Party Status

There were no objections to any of the individuals and organizations appearing on the Active Party List as of September 21, 2010. This list may be updated if there are future requests for Active Party status. It is available in its most current version on the Department's webpage (www.dps.state.ny.us), under the case number for this proceeding.

Combination of Parties

Riverkeeper, Inc. (Riverkeeper) and Scenic Hudson, Inc. (Scenic Hudson) reported that they are coordinating and/or are in contact with Hudson River Sloop Clearwater, Inc. and the New York State Council of Trout Unlimited concerning this project. No other active party combination or coordination was identified. Such coordination, however, is encouraged.

(SIGNED)

MICHELLE L. PHILLIPS

(SIGNED)

KEVIN J. CASUTTO